



FREDERICK COUNTY PLANNING COMMISSION

May 22, 2013 – Public Hearing

TITLE: Eaglehead/Lake Linganore DRRA

FILE NUMBER: DRRA 12-04

REQUEST: DRRA Finding of Consistency
Review of the *Development Rights and Responsibilities Agreement (DRRA)* for the Eaglehead/Lake Linganore Projects to determine whether the proposed agreement is consistent with the Comprehensive Plan.

PROJECT INFORMATION:

LOCATION: Vicinity of Old National Pike, Boyers Mill, Gas House Pike
ZONE: PUD
REGION: New Market
WATER/SEWER: varies
COMP. PLAN/LAND USE: Low Density Residential

APPLICANT/REPRESENTATIVES:

APPLICANT: Oakdale Investments, LLC
OWNER: Oakdale Investments, LLS
ENGINEER: Harris, Smariga & Associates
ATTORNEY: Krista McGowan, Esq.,

STAFF: Kathy Mitchell, Assistant County Attorney
Eric Soter, Director Community Development

RECOMMENDATION: Staff recommends that the Frederick County Planning Commission find that the location, character, and extent of the proposed Development Rights and Responsibilities Agreement for the Eaglehead/Lake Linganore PUD is consistent with the Frederick County Comprehensive Plan.

ATTACHMENTS:

1. Draft Development Rights and Responsibilities Agreement
2. Draft APFO Letter of Understanding

STAFF REPORT

ISSUE

The Planning Commission role in the review of the *Development Rights and Responsibilities Agreement (DRRA)* for the Eaglehead/Lake Langanore PUD is to determine whether the proposed agreement is consistent with the Comprehensive Plan.

The petition from Oakdale Investments LLC was submitted to the County on October 3, 2012. On October 25, 2012, the BOCC voted to accept the petition and move forward with staff review. Since that time, staff and the Developer have worked together to create the attached draft DRRA and draft APFO Letter of Understanding ("LOU"). The Adequate Public Facilities review will also be incorporated into the DRRA process. In addition, this DRRA is under review concurrent with a Phase I PUD Plan application to rezone approximately 950 acres from Agricultural to PUD.

BACKGROUND

Summary of Development History

This DRRA would be applied to all of the undeveloped portions of the Eaglehead/Langanore PUD; not just to the areas subject to the Phase I PUD application and the APFO also under review. The Eaglehead/Langanore PUD was the subject of a prior DRRA review in 2007-2008 as part of the New Market Region Plan update and ultimately was not approved. This first DRRA effort proposed a maximum of 3,235 dwellings, which has been carried forward into the current DRRA under review.

For a more detailed description of the development status and a brief 45-year history of the Eaglehead-Langanore PUD, please refer to the attached document titled: *A History of the Eaglehead-Langanore PUD*. In short though, the Lake Langanore at Eaglehead Planned Unit Development (PUD) was approved in July 1968. The original area included approximately 2,200 acres with a development potential of approximately 7,500 – 9,800 dwellings at an average gross density of 3.4 – 4 dwellings/acre. The development concept proposed a number of villages (see Map 1) around the lakes with a mix of housing types from single-family to multi-family dwellings. The development has been building out over time through various owners/developers and economic cycles.

An estimate of the current development status of the Eaglehead – Langanore PUD is as follows:

| | | |
|------------------------------------|--------------|--|
| • Lots/Units Recorded | 3,561 | Of that: <ul style="list-style-type: none">▪ 2,446 Lots/Units are Built▪ 212 Lots/Units with Issued Permits▪ 903 Lots/Units Recorded & Available |
| • Lots/Units Unrecorded | 3,235 | Of that: <ul style="list-style-type: none">▪ 1,500 Previously Approved/Pending APFO▪ 1,735 Being Rezoned/Pending APFO |
| • Subtotal Oakdale Properties/L.L. | 6,796 | * Note does not include the 248 DU for the Resco property |

The Development Rights and Responsibilities Agreement (DRRA) review and approval procedures are found in Chapter 1-25 of the County Code. If a DRRA is requested concurrent with any other development approval such as a rezoning or adequate public facilities approval, the applicable provisions in Chapters 1-19 and/or 1-20 of the County Code would apply respectively. The rezoning and APFO, while running concurrent with the DRRA approval, are separate actions. The following analysis includes the key provisions and provides the background on the following: *Summary of Proposed DRRA, Development Rights, Development Responsibilities, Summary of Proposed Changes & Key Development Issues, and an assessment of a Finding of Consistency.*

Summary of Proposed DRRA

The two primary components of any DRRA are the *development rights* and the *development responsibilities* that will be fixed for the project for a specified time period. The Eaglehead /Linganore DRRA also proposes to include revisions to the current Adequate Public Facilities Ordinance (APFO). These approvals will incorporate the development areas being considered for rezoning back to PUD, as part of the DRRA approval process.

The Applicant is proposing that the DRRA be in effect for a period of 25 years. Described below is a summary of the rights and the responsibilities applicable to this development. The attached draft DRRA and accompanying exhibits include the specific detailed development approvals and conditions of approval, including the timing of construction, payments, and/or dedication of certain public infrastructure with respect to the development timing.

Development Rights

- Maintain the Planned Unit Development (PUD) zoning with a maximum of 3,235 dwelling units and up to 400,000 square feet of commercial area, not including existing approvals.
- Maintain or obtain other approvals based on current regulations or, if applicable, the regulations in effect when the approvals were granted.
- Receive revised APFO approval (including an Amended and Restated LOU) for the PUD concurrent with the DRRA approval.
- Proceed with project build out for the various phases as outlined in the DRRA.
- Freeze current County development regulations for the duration of the DRRA.
- Maintain the terms of the DRRA for a period of 25 years.

Development Responsibilities

This is a summary of the major conditions of approval. The attachments provide detailed information on other conditions and the timing of approvals for the development.

- Construct or pay for/guarantee road improvements as detailed in the Amended and Restated LOU, including but not limited to: improvements to the interchange at I-70 and Meadow Road, the bridge over Lake Linganore along Eaglehead Drive, the traffic circle at Eaglehead and Old National Pike, Linganore Road, and Gas House Pike.
- Construct or pay for/guarantee water and sewer improvements as detailed in the Amended and Restated LOU.
- Pay the APFO school construction fees as detailed in the Amended and Restated LOU. Based on current rate and unit mix, this would provide over \$26 million in mitigation fees. (Note this is separate from any impact fees for schools which would generate approximately \$39 million based on the current rate and unit mix)
- Pay additional school construction fees for certain land development that otherwise would pass APFO, totaling just under \$1 million.
- Remit the payment in lieu fees under the Moderately Priced Dwelling Unit regulations.
- Pay all normal and customary development review fees and impact fees.
- Dedicate a +/-15 acre elementary school site (to be located in one of the villages/land areas along Gas House Pike)
- Dedicate a minimum 3 acre Fire/EMS site (to be located in one of the villages/land areas along Gas House Pike)
- Maintain the terms of the DRRA for a period of 25 years.

Summary of Key Development Highlights

The primary component of this DRRA is to document the current and pending approvals for the PUD including the concurrent application to restore the zoning on certain land bays, as well as to perform an APFO test for the remainder of the development that otherwise does not have APFO approval or are lots of record. Major public facilities improvements will be provided as outlined in the APFO LOU and as summarized above to include roads, water, sewer, and school improvements as well as land conveyed for public uses (schools, Fire/EMS). The Phase I PUD amendment under review proposes to rezone 950 acres to PUD, accommodating approximately 1,735 dwelling units and does not propose any significant changes to the most recent overall Phase II Plan approved in 2007. The DRRA in addition to an overall cap of 3,235 dwelling units will also establish caps for individual land bays/villages as provided below:

| Section | Units | # DU from Current Rezoning |
|-----------------|------------------------|--|
| • Alpine | 100 | 100 from Rezoning |
| • Hamptons East | 435 | 435 from Rezoning |
| • Hamptons West | 450 | 450 from Rezoning |
| • Town Center | 1,500 | 200 from Rezoning |
| • Westridge | 400 | 400 from rezoning |
| • Woodridge | 150 | 150 from rezoning |
| • Miscellaneous | 200 | <i>(Nightingale, Aspen, Balmoral, Pinehurst, Vistas @ Pinehurst, Indian Caves)</i> |
| Total | 3,235 dwellings | |

The overall PUD subject to the DRRA proposes a commercial area in the Town Center with approximately 200,000 sq. ft., although the DRRA would allow up to a maximum of 400,000 sq. ft. in the entire PUD. Only 200,000 sq. ft. is being tested for APFO approval at this time. Outside of the Town Center the only other areas currently designated for commercial uses are a 5-acre parcel in Summerfield and a parcel in the Coldstream Village, which if ever developed, would only take a fraction of the remaining commercial allotment.

Remaining Issues

As of this date there are not any major remaining issues, although refinements to the associated documents may still occur during this process leading up to the BOCC final decision.

ANALYSIS

Finding of Consistency:

As for the Planning Commission's role, it is limited as prescribed in the Land Use Article of the Annotated Code of Maryland and in Chapter 1-25 of the County Code. In addition, recent amendments to the Land Use Article (as provided for in 2009 SB-280) provide further guidance in making recommendations with respect to "findings of consistency". The bill indicates that:

"....REQUESTS THAT AN ACTION BE "CONSISTENT WITH" OR HAVE "CONSISTENCY WITH" A COMPREHENSIVE PLAN, THE TERM SHALL BE DEFINED TO MEAN AN ACTION TAKEN THAT WILL FURTHER, AND NOT BE CONTRARY TO, THE FOLLOWING ITEMS IN THE PLAN: (1) POLICIES; (2) TIMING OF THE IMPLEMENTATION OF THE PLAN; (3) TIMING OF DEVELOPMENT; (4) TIMING OF REZONING; (5) DEVELOPMENT PATTERNS; (6) LAND USES; AND (7) DENSITIES OR INTENSITIES."

Lastly, in an effort to provide even more clarity on how to define consistency, the following excerpt is from the Maryland Department of Planning Models and Guidelines Document titled: 'Achieving Consistency under the Planning Act'. It states:

The fundamental concept of "consistency" under the new Planning Act is that land use regulations and decisions should agree with, and implement what the Plan recommend and advocates. A consistent regulation or decision may show clear support for the Plan. It may also be neutral – but it should never undermine the Plan.

To that end, the proposed DRRA for the Eaglehead/Lake Linganore PUD DRRA is proposed on land that is zoned residential and commercial development and the proposed densities and intensities are within the limits as prescribed in the Fredrick County Comprehensive Plan. Further, the timing of development and infrastructure improvements outlined within the DRRA provide a mechanism to stage development consistent with the policies of the Comprehensive Plan. The DRRA, in combination with the APFO LOU, provides for the timing of certain improvements including the acquisition of land for public purposes or financial contributions for additional public infrastructure, services, and/or programs that support the Comprehensive Plan. In addition, the existing and proposed development design along with the proposed land use plan will further community design policies of the Comprehensive Plan.

RECOMMENDATION

To that end, Staff recommends that the Frederick County Planning Commission find:

1. That the location, character, and extent of the proposed Development Rights and Responsibilities Agreement for the Eaglehead/Lake Linganore PUD is consistent with the Frederick County Comprehensive Plan.

PLANNING COMMISSION ACTION

MOTION TO APPROVE

I move to find that the that the location, character, and extent of the proposed Development Rights and Responsibilities Agreement (DRRA 12-04) for the Eaglehead/Lake Linganore PUD **is consistent** with the Frederick County Comprehensive Plan.

MOTION TO DENY

I move to find that the that the location, character, and extent of the proposed Development Rights and Responsibilities Agreement (DRRA 12-04) for the Eaglehead/Lake Linganore PUD **is not consistent** with the Frederick County Comprehensive Plan.